

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 2007CF-009613-XX

LEON DAVIS, JR.,

Defendant.

SENTENCING ORDER

On September 10, 2012, the above captioned matter came on for trial upon an Indictment handed down by the Grand Jury on January 8, 2008. The Indictment charged the Defendant, Leon Davis, Jr., with two Counts of First Degree Murder (for the deaths of Pravinkumar C. Patel and Dashrath Patel). It also charged the Defendant with additional Counts of Attempted First Degree Murder (regarding Prakashkumar Patel), Attempted Armed Robbery, and Possession of a Firearm by a Convicted Felon.

The Defendant, Leon Davis, Jr., waived his right to a Trial before a Jury and requested that his guilt or innocence on the above charges be determined by the Court, sitting as Trier of Fact.

After hearing and considering the testimony of over fifty witnesses, studying the exhibits placed into evidence, considering the law applicable to the case, and hearing argument of counsel, the Court found the Defendant, Leon Davis, Jr., Guilty as Charged on each of the five Counts.

The State has sought the Death Penalty against the Defendant in regard to Counts One and Two of the Indictment (the First Degree Murder Counts), and a Penalty Phase hearing was held before the Court on October 9, 2012. The Defendant, Leon Davis, Jr., waived his right to a Jury Trial concerning the Penalty Phase and has left it entirely to the Court to determine what Sentence should be imposed, without taking into consideration any Jury recommendation.

A *Spencer* hearing was held on November 2, 2012.

The Court, after presiding over the Trial, reviewing all of the evidence, reviewing the Sentencing Memorandums submitted by the parties, hearing argument of counsel, and otherwise being more fully informed in the premises, finds as follows:

FACTS

On December 7, 2007, Pravinkumar C. Patel and Dashrath Patel, while at the BP Station on Highway 557 in Polk County, Florida, were each shot in the head while outside changing the gas price sign. Video surveillance cameras reveal that a tall individual, black hooded, masked, and clothed in black, ran up to the door of the BP Station, tried to get in, and finding the door locked, fired a round into the BP Store at Prakashkumar Patel. The perpetrator then turned his attention to Pravinkumar Patel and Dashrath Patel and ran towards them. The perpetrator returned to the front door of the BP Store, attempted to open it again, and then left the area, heading north on foot.

Law enforcement immediately responded and began its investigation that included the retrieval of three projectiles. The first projectile was located inside the BP Store. The other two projectiles were recovered from the heads of Pravinkumar Patel and Dashrath Patel during their autopsies.

During the early investigation of these murders, no suspect came to light.

On December 13, 2007, a robbery and two murders occurred at the Headley Insurance Agency in Lake Wales, Florida. During that investigation, it was determined that a weapon had been fired at least three times. Projectiles were located and retrieved. Those projectiles, along with the projectiles retrieved from the BP Station, were sent to the FDLE lab, and Analyst James Kwong determined that all six projectiles were fired from the same gun, a .38/.357 caliber class firearm having six lands and six grooves with a right twist.

Law enforcement, through their investigation, determined that the Defendant, Leon Davis, Jr., was the perpetrator of the crimes that occurred at the Headley Insurance Agency in Lake Wales. In light of the conclusion that the same weapon was used both at Headley and at the BP Station, Leon Davis, Jr. became a suspect in the "BP Murders."

Law enforcement's continuing investigation, focusing on Leon Davis, Jr. revealed a significant amount of circumstantial evidence leading to the conclusion by this Court, beyond and to the exclusion of all reasonable doubt, that Leon Davis, Jr. attempted a robbery at the BP Station, fired a weapon in the direction of Prakashkumar Patel, and shot Pravinkumar Patel and Dashrath Patel in their heads and killed them.

Leon Davis, Jr. is currently 34 years old and was 29 years old in 2007. At that time he was 6'5" tall and weighed 249 lbs. He grew up in Lake Wales and had lived at 851 Summerlin Drive in Winter Haven, Florida, since 2006. He lived there with his wife, Victoria Lynn Davis, who was several months pregnant in December 2007.

For years the Defendant worked at Florida Natural Growers, a citrus processing plant in the Lake Wales area. In early 2007, Mr. Davis was earning \$13.06 per hour at Florida Natural Growers but left that job for some reason not addressed before this Court. Thereafter, he obtained employment with the City of Eagle Lake, where he was being paid \$9.00 per hour.

Due to complications with a pregnancy, Victoria Davis was on a leave of absence from her job at the Winter Haven Olive Garden restaurant. She testified that finances were tight within the family, with a mortgage being past due, credit cards being maxed out, and her being out of work.

The Defendant, Leon Davis, Jr., lost his job at Eagle Lake and received his last paycheck on December 6, 2007. A review of the Mid Florida Credit Union records for Mr. Davis (Defendant's Exhibit 8) reveals that his last paycheck was automatically deposited in his account at Mid Florida on December 6, 2007. The December 10, 2007, statement also reveals that cash withdrawals were made from Mr. Davis's account on December 6 and 7, 2007. On December 10, 2007, the bank statement indicates that Mr. Davis only had \$2.53 in his checking account and \$5.33 in his savings account. He also had an outstanding loan to Mid Florida and owed them \$1,301.66.

In order to save on expenses, both Victoria Davis and Leon Davis had cancelled their cell phones and turned them in. Mr. Davis had also cancelled his insurance coverage on his Nissan Maxima, turned in the tag on the Maxima, and parked it in his garage as he could not afford the insurance. For years, his insurance had been placed through the Headley Insurance Agency.

It fully appears from the evidence that Mr. Davis was having financial problems and had recently become unemployed. He had a pregnant wife at home who was on a leave of absence during her troubled pregnancy. He was also actively participating in raising his son, Garrion Davis, a Down's syndrome child, who had an upcoming birthday.

On December 7, 2007, sometime between noon and 2:00 p.m., the Defendant was at his cousin's (Randy Black) residence in Waverly, Florida. Randy Black had purchased a Dan Wesson .357 revolver from Wagles Pawn Shop on November 30, 2007 (State's Exhibit 9022), and had paid \$200.00 for it. Leon Davis, Jr. expressed an interest in buying the gun and paid Randy Black \$220.00 for it. James Kwong (the FDLE Firearms Expert) testified that the six projectiles he examined are consistent with a Dan Wesson .357 revolver. He also testified that the six land, six grooved, right twist configuration of the projectiles are consistent with in excess of twenty other different manufacturers besides the Dan Wesson .357 revolver.

The Defendant, Leon Davis, Jr., acknowledged having purchased a firearm from Randy Black and testified that he placed the weapon in a toolbox in his garage. He admits to purchasing and having the gun on December 7, 2007.

Both the Defendant and his wife, Victoria Davis, testified that the Defendant left their home in Winter Haven sometime between 6:00 p.m. and 7:00 p.m. on December 7, 2007. Mr. Davis drove off in Victoria Davis's black Nissan Altima. Mr. Davis was using his wife's car at that point since he had cancelled the insurance on his Nissan Maxima and parked the Maxima in his garage.

Mr. Davis testified that he went shopping at the Eagle Ridge Mall and returned sometime around 9:00 p.m. Victoria Davis testified at trial that the Defendant was gone for a "short period of time" and was only gone for an hour or so. However, she admitted that the Defendant could

have gotten home as late as 9:30 p.m. and, indeed, testified in front of a Grand Jury that the Defendant did not arrive home until sometime between 9:00 p.m. and 9:30 p.m. This statement to the Grand Jury can be used as substantive evidence. See, *Moore v. State*, 452 So.2d 559 (Fla. 1984).

During the continuing investigation of the “BP Murders,” law enforcement set up traffic stops near the BP Station in an effort to determine if any motorist who traveled by the area on a regular basis might have seen anything unusual on December 7, 2007. Those traffic stops, and canvassing of motorists, resulted in locating four witnesses who regularly travelled by the BP Station between 8:00 p.m. and 10:00 p.m.

Jonathan Atkinson testified that he regularly passed the BP Station and, on December 7, 2007, he observed a dark (possibly dark blue) Nissan, with what he described as a “Billet” grille, backed into a cattle gap area just north of the BP Station. His attention was drawn to the vehicle as he had never seen a car parked there before, and it seemed unusual to him. His attention was also drawn to the vehicle as Mr. Atkinson was familiar with “Billet” grilles. He specifically stated that the dark car was a Nissan but could not determine if it was an Altima or a Maxima. Mr. Atkinson, after describing what he had seen on December 7, 2007, was shown State’s Exhibit 511 (a photograph of Victoria Davis’s black Nissan Altima) and stated that that picture is very similar to what he saw and, again, referenced the grille pattern.

William Finley testified that his regular route takes him by the BP Station between 8:30 p.m. and 9:00 p.m. He remembers driving by the BP Station on December 7, 2007, and seeing a dark car (which he thinks was black) backed into a cattle gap area just north of the BP Station. He had no idea as to the make and model of the car but described it as a foreign car. He was shown State’s Exhibit 523, a photo of Victoria Davis’s black Nissan Altima, and stated that the photograph was very consistent with what he recalls seeing. He specifically recalls the headlights and described them as kind of wrap around plastic covered lights.

Jessie Brown testified that she went by the BP Station at sometime between 7:45 p.m. and 8:45 p.m. on December 7, 2007. She observed a black, four-door, car backed into the cattle gap area north of the BP Station. She could only describe the car as a black compact car that appeared to have four doors.

Stephanie Chisholm testified that she drove by the BP Station at approximately 9:00 p.m. on December 7, 2007, and noticed a car backed into the cattle gap area north of the BP Station. She described the vehicle as a dark, sporty, sedan that she believed was either a Nissan or a Toyota.

All four of these witnesses separately described a vehicle parked in an unusual area north of the BP Station that is consistent with Victoria Davis’s 4 door black Nissan Altima, which the Defendant admits he was driving that night.

The murders of Pravinkumar C. Patel and Dashrath Patel occurred at 8:53 p.m. on December 7, 2007. The various video surveillance cameras situated at the BP Station depict a tall, apparently right handed, individual approaching the BP Station just after Pravinkumar C.

Patel and Dashrath Patel exited the store to go out and change the numbers on the large gas price sign on the south side of the BP property. The perpetrator arrived at the front door and looked over in the direction where Pravinkumar C. Patel and Dashrath Patel would have been standing and then faced into the store. Prakashkumar Patel was inside the store, working on the cash register, when he noticed someone at the front door and indicated that the store was closed. He described the perpetrator as a tall black person who was dressed in dark or black clothing. After indicating the store was closed, he observed the perpetrator raise a gun and point it at him. The video shows Prakashkumar Patel ducking below the counter as a shot was fired into the store.

Immediately after the shot was fired, the video depicts the perpetrator looking out towards the area where Pravinkumar C. Patel and Dashrath Patel were standing. Another video depicts the perpetrator running towards them and one of them standing under the gas price sign with his hands up.

The video cameras at the BP Station were all motion activated and movement has to occur within the range of the sensor in order for the cameras to record. The video depicts the perpetrator heading out towards Pravinkumar C. Patel and Dashrath Patel and then the video goes blank. Approximately 40 seconds later, the video depicts the perpetrator heading back towards the store, going to the front door, and then leaving on foot in a northerly direction.

Prakashkumar Patel was on the telephone when the perpetrator first came to the door. After the shot was fired, he immediately hung up and called 911. Law enforcement was dispatched shortly after 9:00 p.m. and several officers converged on the scene.

Deputy Stephen Hearth arrived with his K-9 (Britt). The K-9 located the bodies of Pravinkumar C. Patel and Dashrath Patel out by the gas price sign. Deputy Hearth then had his dog search for any tracks that could be found and the K-9 headed off in a northerly direction. Just north of the BP Station, footprints were found in loose, sandy soil on the shoulder of the road. The footprints led up to tire tracks which were also left in the sandy soil of the shoulder of the road.

The tire tracks were photographed and casts of them were made. State's Exhibits 400 – 498 are photographs of those tire tracks.

Victoria Davis's black Nissan Altima was eventually located and impounded. The tires from that vehicle were removed and are State's Exhibits 9039 – 9042. The photographs of the tires, along with casts of the tire tracks, and the tires themselves, were sent to the FDLE lab for examination. Theresa Stubbs, a tire track examination expert (now retired from the FDLE), testified that she had the opportunity to examine the tires and compare those tires to the photographs and casts provided. It is her opinion that the tire tracks found near the cattle gap just north of the BP Station are of the same tread design, size, and noise treatment as the tires removed from Victoria Davis's black Nissan Altima. While she cannot state that the tires from Mrs. Davis's Nissan specifically left the tracks in the sand (as there was no individual characteristics that were observable) she does conclude and opines that the tire tracks located north of the BP Station "correspond" to the tires on the vehicle being driven by the Defendant on the night of the murders.

On the Sunday following the "BP Murders," December 9, 2007, the Defendant, Leon Davis, Jr., was home when his mother, Linda Davis, came by. Linda Davis testified that her son, Leon Davis, Jr., showed her a gun and commented that he had gotten it from his cousin, Randy. The Defendant likewise testified both at trial and in an earlier statement (page 32 and 33 of State's Exhibit 9050) that he had obtained a gun from Randy Black and showed it to his mother.

The evidence clearly and directly establishes that the Defendant, Leon Davis, Jr., purchased a Dan Wesson .357 revolver on December 7, 2007, and that weapon was still in his possession on December 9, 2007.

On Thursday, December 13, 2007, the Headley Insurance Agency in Lake Wales was robbed and Yvonne Bustamonte and Juanita "Jane" Luciano were bound with duct tape, saturated with gasoline, and set on fire. They died as a result of their injuries. During the course of the robbery, at least three shots were fired and three projectiles were recovered, two from in and around the building, and the third from Yvonne Bustamonte's wrist. Again, those three projectiles were compared to the projectiles recovered from the "BP murders" and James Kwong concluded that all six of the recovered projectiles were fired from the same .38/.357 caliber class firearm.

The investigation of the Headley Insurance Agency murders revealed that the Defendant, Leon Davis, Jr., dropped off his son, Garrion (who had spent the night with him), with Garrion's mother (Dawn Henry) around 6:30 a.m. on December 13, 2007.

A video obtained from the Lake Wales Wal-Mart (State's Exhibit 9034) depicts a tall black man entering the store at approximately 7:00 a.m. Mark Gammons (the Wal-Mart Manager) and Jennifer Debarros (a Wal-Mart employee) positively identified the tall black male depicted in the video as Leon Davis, Jr.

The video further depicts the tall black male making various purchases at Wal-Mart, including a six can orange cooler. The video was compared to receipts from the pictured cash registers and confirms a six can orange cooler was indeed purchased. (See State's Exhibit 3008 and State's Exhibit 202).

Leon Davis, Jr. was identified by Brandon Greissman and Carlos Ortiz as the person they saw leaving the back area of the Headley Insurance Agency. Brandon Greissman testified that he observed the Defendant, Leon Davis, Jr., point a gun at him and fire it. The bullet hit him, removing part of his nose.

Both Brandon Greissman and Carlos Ortiz also described the Defendant as carrying a small orange collapsible cooler.

Fran Murray testified that she approached the rear of the Headley Insurance Agency building to investigate smoke she saw coming from it when she observed a tall, stocky black man carrying an orange collapsible lunch pail in which he stuck a gun. She could not positively identify the Defendant, Leon Davis, Jr., but described the soft collapsible lunch cooler as being

orange and seeing the man carrying the cooler put something black, which she thought was a gun, into it.

The Defendant, Leon Davis, Jr., who had been a customer of Headley Insurance Agency, was also positively identified by the dying declaration of Yvonne Bustamonte. The dying declaration was heard by Lt. Joe Elrod, EMT Ernest Frolich, EMT John Johnson, and Evelyn Anderson. Lt. Joe Elrod, EMT Ernest Frolich, and Evelyn Anderson all heard Yvonne Bustamonte respond "Leon Davis" when asked, "Who did this to you?" John Johnson recalls Ms. Bustamonte saying a name and all he can remember is "Davis."

Evelyn Anderson, a Headley Insurance Agency customer, also described a tall black male, with some kind of bag under his arm, leaving the Headley Insurance Agency building as she was at the front door.

The Jury in case number CF07-009386 found, beyond and to the exclusion of all reasonable doubt that the Defendant, Leon Davis, Jr., was the tall black male involved in the Headley Insurance Agency robbery and murders. He was seen wielding and shooting a firearm during those crimes. The Court finds that the same firearm fired the projectiles that were recovered during the investigation of the crimes occurring at the BP Station.

ANALYSIS OF GUILT

The Court is well aware that the evidence linking Leon Davis, Jr. to the murders that occurred at the BP Station on December 7, 2007, is circumstantial. In evaluating the evidence presented by the State of Florida, the Court has viewed it in light of the law concerning circumstantial evidence. Among other cases researched and considered, the Court has read and paid particular attention to *State v. Law*, 559 So.2d 187 (Fla. 1989); *Miller v. State* 770 So.2d 1144 (Fla. 2000); *Pagan v. State*, 830 So.2d 792 (Fla. 2002); *Ballard v. State*, 923 So.2d 475 (Fla. 2006); *Lindsey v. State*, 14 So.3d 211 (Fla. 2009); *Serrano v. State*, 64 So.3d 93 (Fla. 2011); and *Cordero-Artigas v. State*, 75 So.3d 838 (Fla. 2d D.C.A. 2011).

In analyzing the evidence against Mr. Davis, the facts concerning the firearm used during the BP Station crimes and the Headley Insurance Agency crimes are of paramount importance. The undisputed fact is that the six projectiles (three retrieved from the Headley crime scene and three retrieved from the BP crime scene) were all fired from the same weapon. Leon Davis, Jr. was positively identified as the person wielding the firearm involved at the Headley Insurance Agency crime scene. The same weapon was used at the BP Station on December 7, 2007, by a black male who fits the physical description of Leon Davis.

The evidence establishes that Leon Davis, Jr. bought a Dan Wesson .357 revolver from his cousin, Randy Black, on the afternoon of December 7, 2007. Mr. Davis admits buying that gun.

A .38/.357 caliber class firearm discharged the projectiles recovered at the BP Station that were fired from a gun into the BP store and into the heads of the two victims.

Both the Defendant and his mother testified that a firearm was displayed by Leon Davis to his mother, Linda Davis, on Sunday, December 9, 2007.

A .38/.357 caliber class firearm discharged the projectiles at the Headley Insurance Agency during the crimes that occurred there on December 13, 2007.

The Defendant testified that he sold the Dan Wesson .357 that he obtained from Randy Black sometime after he showed it to his mother on December 9, 2007. He states that he sold it to someone known only as "Red" in the Inwood area of Winter Haven, Florida.

The Defendant's hypothesis of innocence is that he is the victim of misidentification, and some other tall black male committed the crimes at the BP Station and at the Headley Insurance Agency office.

The circumstantial and non-circumstantial evidence concerning the Headley Insurance Agency crimes proves, beyond a reasonable doubt, that Leon Davis, Jr. robbed the Headley Insurance Agency and killed Yvonne Bustamonte and Juanita "Jane" Luciano as was found by the Jury in that case. The gun used in those crimes was also used to murder Pravinkumar C. Patel and Dashrath Patel. Beyond the fact that the Defendant purchased a Dan Wesson .357 revolver from Randy Black and all six projectiles recovered from the two crime scenes are consistent with having been shot from the same type of firearm, there are numerous other circumstantial facts that lead to the conclusion, beyond a reasonable doubt, that Leon Davis, Jr. committed the BP murders.

Leon Davis, Jr. was facing some very serious financial setbacks. He did not have a job, and his wife was on leave from her employment due to a problem pregnancy. His credit cards were maxed out, and he only had a few dollars in his accounts at Mid Florida Federal Credit Union. He was behind on his mortgage payments, and he owed money on a loan to the bank. He had even given up his cell phone. Due to an inability to pay his insurance payments, he parked his Nissan Maxima and was using his wife's car. He was also facing his son's, Garrion's, upcoming birthday and the Christmas holidays.

In spite of his financial difficulties, Mr. Davis decided to purchase a gun and spent \$220.00 on a Dan Wesson .357 revolver. This is a very strange purchase, and an unlawful act, in light of the fact that the Defendant was a convicted felon on felony probation at the time of his acquisition of the firearm.

On the evening of December 7, 2007, Mr. Davis left his home sometime between 6:00 p.m. and 7:00 p.m. in his wife's Nissan Altima, allegedly to go shopping. His whereabouts are unknown until he returned sometime after 9:00 p.m. to 9:30 p.m. Mr. Davis claims he was at the Eagle Ridge Mall, but there is no evidence whatsoever to corroborate that claim.

Sometime between 8:00 p.m. and 9:00 p.m. on December 7, 2007, four different people saw a (collectively described) dark, four-door, Nissan automobile, with a sporty rounded front end, including what was described as a "Billett" grille. The four different descriptions,

individually and collectively, describe the black Nissan Altima being driven by the Defendant, Leon Davis, Jr., on December 7, 2007.

In addition to several witnesses observing the same vehicle parked just north of the BP Station, tire tracks were discovered that, according to an FDLE tire track expert, “correspond” to the tires removed from the black Nissan Altima owned by Victoria Davis and driven by Leon Davis, Jr. on December 7, 2007.

Finally, the BP videos depict a tall, right handed perpetrator, who was described by Prakashkumar Patel as a black male and that coincides with the Defendant’s height and build.

The evidence comes down to this; Leon Davis, Jr. was positively identified as the gun wielding perpetrator of the Headley Insurance Agency crimes and was convicted of those crimes. That same gun that was used at the Headley crime scene was used at the BP Station by a tall black man who, after murdering the two Patel victims, headed north on foot towards an area where a black Nissan automobile, with a noteworthy grille, was seen parked, backed into a cattle gap area. That car left tire tracks that correspond to the tires on the black Nissan Altima being driven by Leon Davis, Jr. on December 7, 2007. Leon Davis, Jr. bought a Dan Wesson .357 revolver on December 7, 2007, admits to having it that evening, showing it to his mother on December 9, 2007, and was seen in possession of a firearm at Headley Insurance Agency on December 13, 2007. The three projectiles fired from a gun used at the Headley Insurance Agency office are identical to the projectiles recovered from the BP Station crime scene and were all fired from the same .38/.357 caliber class of firearm, which includes the Dan Wesson .357 firearm purchased by Leon Davis, Jr. from his cousin, Randy Black.

It is the Court’s conclusion and determination that Leon Davis, Jr., beyond and to the exclusion of all reasonable doubt, committed the crimes at the BP Station.

ANALYSIS OF PENALTY

The State of Florida is seeking the Death Penalty against Leon Davis, Jr.

The Legislature of the State of Florida, pursuant to Florida Statutes Chapter 921, has established a scheme of sentencing to be imposed on those that have committed crimes within the State. Florida Statutes §921.141 very specifically sets out the procedure to be followed and the substantive factors to be considered when imposing a sentence for capital felonies, be it a sentence of death or life imprisonment.

It is up to the Court to judge the facts presented in order to determine whether or not those facts reach the threshold of establishing, beyond a reasonable doubt, that a statutory Aggravator, or Aggravators, exist that would allow for the imposition of the death penalty. If that threshold is met, it is up to the Court, after receiving the Jury’s recommendation, to independently weigh the Aggravators against the statutory and non-statutory mitigators (which must be established by a preponderance of the evidence) before entering sentence. In this process, a Jury’s recommendation is not binding but must be given great weight. *Smith v. State*, 515 So.2d 182 (Fla. 1987).

The Defendant, Leon Davis, Jr., has waived his right to receive a Jury's recommendation, so it is left to this Court to determine and impose an appropriate sentence.

A. **AGGRAVATORS**

The State has submitted and argued 4 Statutory Aggravators.

- 1) The Capital Felony was committed by a person previously convicted of a Felony and under Sentence of Imprisonment or placed on Community Control or Felony Probation.
F.S. §921.141(5)(a)

The Defendant, Leon Davis, Jr., was on felony probation at the time he committed the murders of Pravinkumar C. Patel and Dashrath Patel. See State's Exhibit 1 and State's Exhibit 2 submitted at the Penalty Phase trial.

State's Exhibit 2 reveals that the Defendant was on felony probation for 6 Counts of Grand Theft.

This Aggravator has been proven beyond and to the exclusion of all reasonable doubt, and the Court assigns it moderate weight.

- 2) The Defendant was previously convicted of another Capital Felony or of a Felony involving the use of threat of violence to the person.
F.S. §921.141(5)(b)

By the time the Defendant, Leon Davis, Jr., was found guilty and convicted of the murders of Pravinkumar C. Patel and Dashrath Patel, the Defendant was under a sentence of Death for the murders of Yvonne Bustamonte and Juanita Luciano as was ordered by Judge J. Michael Hunter in his Sentencing Order of April 29, 2011, in Case Number CF07-009386. (See State's Exhibit 4). While the murders of Yvonne Bustamonte and Juanita Luciano occurred after the murders of Pravinkumar C. Patel and Dashrath Patel, the Defendant was previously convicted of those murders before standing trial in this case. The prior convictions for murders that occur subsequent to the murders under consideration can be considered as an Aggravator. *Eldridge v. State*, 346 So.2d 998 (Fla. 1977).

This Aggravator has been proven beyond and to the exclusion of all reasonable doubt and the Court assigns it very great weight.

- 3) The Capital Felony was committed while the Defendant was engaged in a commission of, or an attempt to commit, or flight after committing, or attempting to commit a robbery.
F.S. §921.141(5)(d)

In Count 4 of the Indictment, the Defendant, Leon Davis, Jr., was charged with Attempted Armed Robbery. The evidence adduced at trial proves beyond and to the exclusion of all reasonable doubt that the Defendant was attempting to rob the BP Station and the murders of Pravinkumar C. Patel and Dashrath Patel occurred during the attempted robbery or the flight after attempting the robbery.

The surveillance cameras clearly depict a perpetrator, hooded, masked, and dressed in dark clothing, approaching the locked door of the BP Station. After Prakashkumar Patel signaled the store was closed, the perpetrator lifted a gun, pointed it into the store, and fired off a shot in the direction of Prakashkumar Patel.

The surveillance cameras then depict the perpetrator running out towards the area where Pravinkumar C. Patel and Dashrath Patel were changing out a price sign.

The evidence further discloses that the perpetrator had stationed a car somewhat north of the BP Station and waited for the BP Station to be closed for business when he approached it.

The perpetrator was clothed in dark clothing and wearing a hood and mask.

This evidence, along with the other evidence concerning what was going on in Mr. Davis's life leads to the inescapable conclusion that he was attempting to rob the BP Station and was thwarted in doing so by a locked door.

For whatever reason, his attention was drawn to Pravinkumar C. Patel and Dashrath Patel who were murdered, execution style, out by the gas sign. The perpetrator is then seen running back to the BP Station, trying the door again, and, failing to open it, leaving in a northerly direction.

The Court finds that this Aggravator has been proven beyond and to the exclusion of all reasonable doubt and assigns it great weight.

- 4) The Capital Felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
F.S. §921.141(5)(e)

In order for the State to prevail on this Aggravator, it must prove beyond and to the exclusion of all reasonable doubt that the sole or dominant motive for the killing was to eliminate witnesses. *Looney v. State*, 803 So.2d 656 (Fla. 2001); *Zack v. State*, 753 So.2d 9 (Fla. 2000); *Jennings v. State*, 718 So.2d 144 (Fla. 1988); *Urban v. State*, 714 So.2d 411 (Fla. 1998); *Consalvo v. State*, 697 So.2d 805 (Fla. 1996); and *Robertson v. State*, 611 So.2d 1228 (Fla. 1993).

“Mere speculation on the part of the State that witness elimination was the dominate motive behind a murder cannot support the avoid arrest Aggravator.” *Looney v. State*, 803 So.2d 656, 676 (Fla. 2001).

In this case, the State provides a strong argument that the evidence leads to the logical conclusion that the Defendant murdered Pravinkumar C. Patel and Dashrath Patel in order to eliminate them as witnesses and effect his escape.

The video (State’s Exhibit 1502) clearly depicts the perpetrator approaching the door of the BP Station and looking out towards the area where Pravinkumar C. Patel and Dashrath Patel were changing out a price sign. The perpetrator then concentrates on the interior of the BP store, trying to gain access to the store. He then raises a gun and fires it the store. The video further depicts the perpetrator looking back towards the area of the gas sign and then running towards that area.

One of the final scenes in the video shows either Pravinkumar C. Patel or Dashrath Patel standing under the gas sign with his hands raised. Unfortunately, the video goes blank at that point as the perpetrator exceeded the range of the motion detector for the camera. Both Pravinkumar C. Patel and Dashrath Patel were shot, execution style, with the gun being placed up against their heads. A logical conclusion can be drawn that both of the Patels were murdered in order for the perpetrator to effectuate his escape by eliminating witnesses who would have been able to see his route of escape and possibly follow him towards the parked getaway vehicle and, thereafter, be able to identify the vehicle.

However, there is no evidence to suggest that either of the victims were able to clearly see the perpetrator. The perpetrator had dark clothing on, a hood, and a mask. There is no way for the victims to have been able to see the perpetrator clearly enough to later make identification.

The video clearly depicts one of the victims standing in the distance with his arms raised; however, after the video goes blank, there is no way to determine exactly what happened out under the gas sign. Did the other victim take a defensive posture, or even make some offensive move towards the perpetrator? Did the victim, with his hands depicted in a raised position, lower his hands and make some aggressive move towards the perpetrator? Was there some sort of scuffle before the fatal shots were fired? We will never know.

While the State’s argument is very compelling and is strongly supported by the circumstantial evidence, the Court cannot find beyond and to the exclusion of all reasonable doubt that the “sole or dominate motive” for the killings was to eliminate witnesses.

Therefore, the Court concludes that this Aggravator has not been proven.

B. MITIGATORS

The Defendant has submitted and argued 2 Statutory Mitigators and 15 Non-Statutory Mitigators. In support of these Mitigators, the Defendant has submitted the testimony of Dawn Henry, Linda Davis and India Owens as provided in Case Number CF07-009386. (Defendant's Exhibit 2 for the Penalty Phase). The Defendant has also submitted Defendant's Exhibit 1 to the Penalty Phase, a medical record concerning the Defendant's psychiatric admission for evaluation while in the Marine Corps. The Court has also considered the Defendant's argument provided at the Penalty Phase in this case, the *Spencer* hearing in this case, and has been provided and read the Transcript of both the Closing Arguments provided to the Jury in Case Number CF07-009386, and the Arguments to the Court at the *Spencer* hearing in Case Number CF07-009386 (both of which have been filed in this Court file pursuant to a Notice of Filing).

STATUTORY MITIGATOR:

1. The Defendant has no significant history of prior criminal activity.
F.S. §921.141(6)(a)

While it is true that the Defendant has no prior criminal history of violence, he was on probation for six Counts of Grand Theft at the time of these murders.

The Court finds that this Statutory Mitigator has not been proven.

2. The Capital Felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.
F.S. §921.141(6)(b)

The evidence presented demonstrates that the Defendant was under financial stress at the time of the murders. It also demonstrates that the Defendant had been despondent at various times in his past and had suffered through various psychological traumas during his childhood.

The Defendant did not present any expert testimony concerning the Defendant's mental health at the time of these murders but the medical record concerning his prior psychiatric treatment (Defendant's Exhibit 1) references a personality disorder, not otherwise specified.

The Court finds that this Statutory Mitigator has been proven by the greater weight of the evidence and assigns it little weight.

NON-STATUTORY MITIGATORS:

1. Victim of bullying throughout childhood.

Both Linda Davis (Defendant's mother) and India Owens (Defendant's sister) (See Defendant's Exhibit 2) testified that Leon Davis, Jr. was regularly bullied and beat up

by others while in school and this continued until he was in the Marine Corps. They described Leon Davis, Jr. as being a skinny kid, subject to bullying.

The Court finds that this mitigating circumstance has been proven by the greater weight of the evidence and assigns it moderate weight.

2. Victim of sexual assault as a child.

Linda Davis testified that when Leon Davis, Jr., was eight years old, he was forced to perform oral sex on another boy. It appears that the sexual assault was by the same older boy that was bullying the Defendant.

The Court finds this mitigating circumstance has been proven by the greater weight of the evidence and assigns it moderate weight.

3. Victim of child abuse, both physical and emotional, by a caretaker.

Linda Davis testified that Leon Davis, Jr., was beaten by Danine Clark, a caretaker, when he was twelve to thirteen years old. It appears that the Defendant's mother left the home for a period of time and left her children under the care of Danine Clark, who was an abusive woman. India Owens testified that Ms. Clark was both verbally and physically abusive.

The Court finds this mitigating circumstance has been proven by the greater weight of the evidence and assigns it moderate weight.

4. Overall family dynamics, etc.

The evidence establishes that the Defendant's father left the family home when Leon Davis, Jr., was approximately two years old. However, it appears that he maintained contact with the family and specifically with the Defendant during the ensuing years.

When the Defendant was approximately twelve to thirteen years old, his mother moved out of the home, leaving the Defendant, along with his sisters, in the care of Danine Clark who abused the Defendant, both verbally and physically. However, his mother continued a relationship with the Defendant and was involved in the Defendant's life in and around the time of these murders. It also appears that the Defendant had a close relationship with his sisters even though they had been separated on occasion throughout their lives.

The Court finds this mitigating circumstance has been proven by the greater weight of the evidence and assigns it little weight.

5. Military service in the U.S. Marine Corps.

The Defendant joined the United States Marine Corps. when he was nineteen years

old, which is admirable.

However, he was only in the Marine Corps. for thirteen months and apparently grew very frustrated with Marine Corps. life.

He was discharged from the Marine Corps. for psychiatric reasons.

The Court finds this mitigating circumstance has been proven by the greater weight of the evidence and assigns it little weight.

6. History of being suicidal both as a child and as an adult.

Defendant's Exhibit 1 (the Marine Corps. Mental Health Record) reveals that the Defendant may have attempted suicide when he intentionally crashed his motor vehicle into a pole.

His mother, Linda Davis, described Leon Davis, Jr., as having periods of depression, and she had been fearful that he may attempt suicide. It appears that the Defendant underwent some form of counseling while in Middle School.

The Court finds that this mitigating circumstance has been proven by a greater weight of the evidence and assigns it slight weight.

7. The diagnosed personality disorder.

Defendant's Exhibit 1 indicates that the Defendant was diagnosed with a (personality disorder, not otherwise specified with Cluster B and C features).

The Court finds that this mitigating circumstance has been proven by a greater weight of the evidence and assigns it slight weight.

8. History of Depression.

Linda Davis testified as to her observations concerning Leon Davis, Jr.'s occasional fits of depression, and he apparently received some counseling while in Middle School.

The Court finds that this mitigating circumstance has been proven by a greater weight of the evidence and assigns it slight weight.

9. Stressors at time of incident.

It is obvious that the Defendant was under some financial stress in December 2007. By that time, he had lost his long term, good paying job at Florida Natural Growers and had gone to work for the City of Eagle Lake. However, he also lost that job and received his last paycheck from the City of Eagle Lake on December 6, 2007.

The Defendant's wife, Victoria Lynn Davis, was on a leave of absence from her job due to problems with her pregnancy. The family owed past due mortgage payments and had maxed out their credit cards. The Defendant did not have any significant amount of cash in the bank and was facing his son's upcoming birthday and the Christmas holidays.

His son, Garion Davis, was born with Down's syndrome, and the Defendant was actively participating in this upbringing. It is clear that he spent a lot of time with his son, Garion Davis.

The Court finds this mitigating circumstance has been proven by a greater weight of the evidence, but it does not justify a decision to rob a convenience store and murder two victims in the course of the attempted robbery.

The Court assigns this Mitigator little weight.

10. Good person in general.

The evidence establishes that the Defendant, Leon Davis, Jr., was a loving husband, who was devoted to his Down's syndrome son, Garion Davis. He was also actively involved in his family, regularly seeing his brother and his sisters.

It appears that he was very well regarded by his entire family, his friends, and his employers.

The Court finds this Mitigator has been proven by a greater weight of the evidence but, in light of the murders at Headley Insurance Agency, assigns it little weight.

11. Good worker.

The Defendant worked at Florida Natural Growers from 1999 to 2007, and appears to have been very well regarded for his work ethic. It also appears that he was well regarded when working at the City of Eagle Lake.

The Court finds this mitigating circumstance has been proven by a greater weight of the evidence and assigns it little weight.

12. Good son, good sibling, good husband.

As we discussed in paragraph 10 above, the Defendant's family members have nothing but good things to say about Leon Davis, Jr. It is obvious that they hold him in high regard and that he was devoted to his family.

The Court finds that this mitigating circumstance has been proven by a greater weight of the evidence and assigns it moderate weight.

13. Good father to child with Down's syndrome.

Leon Davis, Jr.'s son, Garion Davis (named after Leon's brother), has Down's syndrome. Dawn Henry (the mother of young Garion Davis) testified that the Defendant is a loving, caring, generous father to Garion and regularly participated in young Garion's life. He actively took care of his son and provided monetary support without hesitation.

The Court finds that this mitigating circumstance has been proven by a greater weight of the evidence and assigns it moderate weight.

14. Good behavior during trial as well as other Court proceedings.

The Defendant, Leon Davis, Jr., has always conducted himself in a polite and respectful manner towards the Court and, by all appearances, to the bailiffs and other Court personnel.

The Court finds that this mitigating circumstance has been proven by a greater weight of the evidence and assigns it slight weight.

15. Good behavior while in jail and in prison.

The Defendant has submitted documentation from the Polk County Sheriff's Office and from the Department of Corrections indicating that the Defendant, Leon Davis, Jr., has received no disciplinary reports while in jail or in prison.

The Court finds that this mitigating circumstance has been proven by a greater weight of the evidence and assigns it little weight.

CONCLUSION

This Court tried the case without a Jury and, therefore, there is no Jury Recommendation concerning what is an appropriate Sentence in this case.

The State has proven, beyond and to the exclusion of all reasonable doubt, 3 Statutory Aggravators, to which the Court has assigned great weight. The Court has also found numerous Mitigators exist and have been proven.

In weighing the aggravating factors against the mitigating factors, the Court understands that the process is not simply a quantitative analysis but a qualitative one. It is the Court's duty to look at the nature and quality of the aggravating and mitigating circumstances that have been established.

Under such analysis, the aggravating circumstances in this case far outweigh the mitigating circumstances.

Based on the above, it is therefore **ORDERED** as follows:

SENTENCE

As to Count 1 of the Indictment, the First Degree Murder of Pravinkumar C. Patel, you, Leon Davis, Jr., are hereby sentenced to Death.

As to Count 2 of the Indictment, the First Degree Murder of Dashrath Patel, you, Leon Davis, Jr., are hereby sentenced to Death.

As to Count 3 of the Indictment, the Attempted First Degree Murder of Prakashkumar Patel, you, Leon Davis, Jr., are hereby sentenced to Life in State Prison, including a twenty (20) year minimum mandatory sentence due to the discharge of a firearm. [FS§775.087(2)(a)2]

As to Count 4 of the Indictment, the Attempted Armed Robbery, you, Leon Davis, Jr., are hereby sentenced to twenty (20) years in State Prison, including a 20 year minimum mandatory sentence due to the discharge of a firearm. [FS§775.087(2)(a)2]

As to Count 5 of the Indictment, the Possession of a Firearm by a Convicted Felon, you, Leon Davis, Jr., are hereby sentenced to fifteen (15) years in State Prison, including a three (3) year minimum mandatory sentence. [FS§775.087(2)(a)1]

The sentences imposed in Counts 1 and 2 above are to run concurrent with each other.

Pursuant to FS §775.087(2)(d), the sentences imposed in Counts 3, 4, and 5 above are to run consecutive to each other and consecutive to any other sentence you are facing.

It is **ORDERED** that you, Leon Davis, Jr., be taken by the proper authority to the Florida State Prison, and there be kept under close confinement until the date your execution is set.

You are hereby notified that this Sentence is subject to an automatic review by the Supreme Court.

DONE AND ORDERED in Chambers at Bartow, Polk County, Florida, on this 30th day of November 2012.

/s/ DONALD G. JACOBSEN

DONALD G. JACOBSEN
Circuit Judge

Copies furnished to:

John Aguero, ASA
Paul Wallace, ASA
Robert Norgard, Esq.
Andrea Norgard, Esq.